

ORDINANCE 07- 19

AN ORDINANCE VACATING AN EASEMENT WITHIN THE TOWN OF WESTFIELD, INDIANA

WHEREAS, the Town is in possession of easements across property for the purpose of providing access across a property for the purpose of constructing, operating, maintaining, repairing, replacing sanitary sewer and telecommunication lines.; and,

WHEREAS, there no longer remains any public need or necessity for the below describes easement due to an alternate being proposed; and,

WHEREAS, upon due consideration, the Town Council of the Town of Westfield has determined that the vacation of said easement will not hinder the growth or orderly development of the area; will not deny or deprive access to adjacent lands; will not hinder public access to public facilities and will not hinder or prevent the use of any public way; and,

WHEREAS, the vacation of this easement shall be conditioned upon the execution of an alternate easement for the purpose of constructing, operating, maintaining, repairing, replacing sanitary sewer and telecommunication lines.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN
OF WESTFIELD, INDIANA:**

SECTION 1. The easement described in Exhibit "A" attached hereto and made a part hereof is hereby vacated.

SECTION 2. The Clerk-Treasurer is directed to record a copy of this Ordinance in the office of the Recorder of Hamilton County, Indiana.

SECTION 3. This Ordinance shall become effective upon its adoption and proper publication in accordance with Indiana law.

ALL OF WHICH IS ORDAINED this ____ day of _____, 2007.
WESTFIELD TOWN COUNCIL

Voting For

Voting Against

Abstain

Andy Cook

Andy Cook

Andy Cook

John Dippel

John Dippel

John Dippel

Jack Hart

Jack Hart

Jack Hart

Robert Horkay

Robert Horkay

Robert Horkay

Joseph Plankis

Joseph Plankis

Joseph Plankis

Robert J. Smith

Robert J. Smith

Robert J. Smith

Ron Thomas

Ron Thomas

Ron Thomas

ATTEST:

Clerk-Treasurer, Cindy J. Gossard

This Ordinance prepared by:
Brian J. Zaiger
Krieg DeVault, LLP

"EXHIBIT A"

SANITARY SEWER AND TELECOMMUNICATIONS EASEMENT

FILE COPY

THIS INDENTURE, made this 11th day of May, 2007, by and between Wilfong Development Company, LLP hereinafter referred to as the "Grantor" and THE TOWN OF WESTFIELD, Indiana, having an office for the transaction of business at 130 Penn Street, Westfield, IN, 46074, hereinafter referred to as the "Grantee."

WITNESSETH

The Grantor, in consideration of the covenants and agreements hereinafter recited and the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby give, grant and convey unto the Grantee, its successors and assigns, forever, a perpetual easement and right of way in, under, across and over the real estate of the Grantor, situated in Hamilton County, Indiana, more particularly described on Exhibit A and as shown on the sketch, Exhibit B, both attached hereto and made a part hereof, for the purpose of constructing, operating, maintaining, repairing, replacing, or removing and adding to from time to time (i) sanitary sewer lines together with all necessary manholes, air release structures and appurtenances and attached facilities, including service laterals and connections for the collection and conveyance of wastewater (the "Sewer Facilities"), and (ii) telephone lines, including but not limited to fiber optic cables, together with all attached and associated facilities and systems, for the conveyance and transmission of telecommunications services, including but not limited to voice, data and video traffic (the "Telecom Facilities") (the Sewer Facilities and the Telecom Facilities, together the "Utility Facilities"). The Grantor also does hereby give, grant and convey unto the Grantee, a temporary construction easement in, under, across and over the real estate of the Grantor, more particularly described on Exhibit A and as shown on Exhibit B, for any and all activities necessary, incidental or related to the construction of the Utility Facilities. The temporary construction easement shall expire and terminate upon completion of the original construction.

Together with the right to the Grantee, its successors and assigns, to (i) enter in and upon the real estate described above with men and machinery, vehicles and material at any and all times for the purpose of maintaining, repairing, renewing or adding to the Utility Facilities, (ii) remove trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein, and (iii) for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted.

2007043504 EASEMENTS \$35.00
08/02/2007 09:31:00A 12 PGS
Jennifer J Hayden
HAMILTON County Recorder IN
Recorded as Presented

The right of the Grantor to freely use and enjoy its interest in the real estate is reserved to Grantor, its successors and assigns insofar as the exercise thereof does not endanger or interfere with the construction, operation, and maintenance of the Utility Facilities, except that no building, structure or similar improvements shall be erected within said easement, nor shall the grade or ground cover over the Utility Facilities be substantially altered, without the consent of the Grantee. Notwithstanding the foregoing, no potable water pipes or conduits shall be placed within ten (10) feet, measured horizontally, from the said sanitary sewer pipes except pipes crossing same at right angles, in which latter case, a minimum distance of two (2) feet shall be maintained between the pipes. All sewer pipe shall be laid below any potable water pipes. No excavation or blasting shall be carried on which in any way endangers or might endanger the Utility Facilities.

TO HAVE AND TO HOLD the above granted easement unto the same Grantee, its successors and assigns forever.

The Grantee agrees, by the acceptance of this easement that, upon any opening made in connection with any of the purposes of this easement, said opening shall be backfilled and resurfaced to as nearly as possible the same condition as existed when said opening was made, provided that Grantee shall not be obligated to restore landscaping, other than reseeding any grass which was removed upon entry, all such work to be done at the expense of the Grantee. Any damages to the crops, fences, tile or roads of Grantor caused by Grantee in the construction and installation of the Utility Facilities or in the maintenance, operation, repair, inspection, removal or replacement thereof shall be promptly paid by Grantee, provided written notice thereof is given to Grantee at its Public Works offices (or such other place as Grantee may designate in writing), within thirty (30) days after the occurrence of such damage. Damage for crops shall be based on the amount of affected acreage, the average yield of Grantor's farmland or similar farmland and the market rate for the affected crop at the time of the damage.

And the said Grantor does covenant with the said Grantee as follows:

1. That the Grantor is the owner in fee simple of the real estate, is lawfully seized thereof, and has authority to grant and convey the foregoing easement, and guarantees the quiet possession thereof, and that Grantor will warrant and defend the Grantee's title to the easement hereby granted against all claims. In accordance with Ind. Code 32-23-2-5(a) Grantor acquired said real estate by deed dated January 20, 2006, and recorded in the Office of the Recorder of Deeds of Hamilton County, Indiana,

in Deed Book _____, Page _____, or as Instrument No. 200600004408,

on the 27th day of January, 2006.

2. That the Grantee shall quietly enjoy the said easement.
3. That the real estate hereby subjected to said easement is subject to no mortgages except
Community Bank Loan #00900696 9427-3. (If none, state "No Exceptions.")

(IN WITNESS WHEREOF, the Grantor has duly executed this INDENTURE, all as of the
day and year first above written.

Wilfong Development Company, LLP a(n) Indiana Limited Liability Partnership

Ralph L. Wilfong, II
Ralph L. Wilfong, II

MANAGING PARTNER
(Title)

STATE OF Indiana)

) SS:

COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong, II as
Partner of Wilfong Development Company LLP, who having been duly sworn upon his/her oath acknowledged the
execution of the foregoing easement for and on behalf of the said partnership.

Witness my hand and Notarial Seal this 21st day of May, 2007.



(Signature)

(Printed Name) Douglas D. Elmore

Notary Public residing in Hendricks County

My Commission Expires: July 10, 2008

This instrument prepared by:

Brian J. Zaiger, Attorney at Law
CHURCH, CHURCH, HITTLE & ANTRIM
938 Corner Street, P. O. Box 10
Noblesville, IN 46060
(317) 773-2190

EXHIBIT "A"

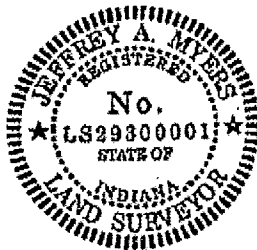
Project: Westfield Westside Interceptor Sheet 1 of 2
Parcel: 5 Permanent Easement for Sanitary Sewer
 and Telecommunications

A part of the Northeast Quarter of Section 5, Township 18 North, Range 3 East, Hamilton County, Indiana and being that part of the grantor's land lying within the permanent easement lines depicted on the attached Easement Parcel Plat, marked "EXHIBIT B", described as follows: Beginning on the east line of said section North 0 degrees 11 minutes 56 seconds East 8.27 feet (along said east line) from Station 98+86.03, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence North 90 degrees 00 minutes 00 seconds West 37.09 feet to point "818" designated on said parcel plat; thence South 0 degrees 00 minutes 00 seconds West 257.76 feet to point "816" designated on said parcel plat; thence South 18 degrees 40 minutes 04 seconds West 212.10 feet to point "576" designated on said parcel plat; thence North 80 degrees 14 minutes 55 seconds West 542.90 feet to point "575" designated on said parcel plat; thence South 23 degrees 15 minutes 07 seconds West 286.61 feet to point "574" designated on said parcel plat; thence South 36 degrees 38 minutes 11 seconds West 503.85 feet to point "573" designated on said parcel plat; thence South 45 degrees 42 minutes 38 seconds West 404.03 feet to point "814" designated on said parcel plat; thence South 0 degrees 00 minutes 00 seconds East 37.73 feet to the south line of said quarter section; thence South 89 degrees 25 minutes 38 seconds West 5.00 feet along said south line to Station 76+21.80, said Line "A"; thence continuing South 89 degrees 25 minutes 38 seconds West 25.00 feet along said south line; thence North 0 degrees 00 minutes 00 seconds West 50.67 feet to point "815" designated on said parcel plat; thence North 45 degrees 42 minutes 38 seconds East 414.30 feet to point "817" designated on said parcel plat; thence North 36 degrees 38 minutes 11

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 2 of 2
Parcel: 5 Permanent Easement for Sanitary Sewer
 and Telecommunications

seconds East 497.95 feet to point "518" designated on said parcel plat; thence North 23 degrees 15 minutes 07 seconds East 306.74 feet to point "519" designated on said parcel plat; thence South 80 degrees 14 minutes 55 seconds East 542.11 feet to point "822" designated on said parcel plat; thence North 18 degrees 17 minutes 47 seconds East 181.22 feet to point "817" designated on said parcel plat; thence North 0 degrees 00 minutes 00 seconds East 282.93 feet to point "819" designated on said parcel plat; thence South 90 degrees 00 minutes 00 seconds East 67.20 feet to the east line of said section; thence South 0 degrees 11 minutes 56 seconds West 30.00 feet to the point of beginning and containing 1.590 acres, more or less.



Certified this 12th day of February, 2007



Jeffrey A. Myers, PLS
Professional Land Surveyor No. 29300001
State of Indiana

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 1 of 2
Parcel: 5A Temporary Easement for Sanitary Sewer Construction
 and Telecommunications

A part of the Northeast Quarter of Section 5, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: Beginning on the east line of said section North 0 degrees 11 minutes 56 seconds East 23.27 feet (along said east line) from Station 98+86.03, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence South 0 degrees 00 minutes 00 seconds West 282.93 feet; thence South 18 degrees 17 minutes 47 seconds West 181.22 feet; thence North 80 degrees 14 minutes 55 seconds West 542.11 feet; thence South 23 degrees 15 minutes 07 seconds West 306.74 feet; thence South 36 degrees 38 minutes 11 seconds West 497.95 feet; thence South 45 degrees 42 minutes 38 seconds West 414.30 feet; thence South 0 degrees 00 minutes 00 seconds East 50.67 feet to the south line of said quarter section; thence South 89 degrees 25 minutes 38 seconds West 30.00 feet along said south line; thence North 0 degrees 00 minutes 00 seconds West 63.62 feet; thence North 45 degrees 42 minutes 38 seconds East 424.56 feet; thence North 36 degrees 38 minutes 11 seconds East 492.05 feet; thence North 23 degrees 15 minutes 07 seconds East 326.87 feet; thence South 80 degrees 14 minutes 55 seconds East 539.93 feet; thence North 18 degrees 17 minutes 47 seconds East 150.56 feet; thence North 0 degrees 00 minutes 00 seconds East 308.09 feet; thence South 90 degrees 00 minutes 00 seconds East 97.30 feet to the east line of said

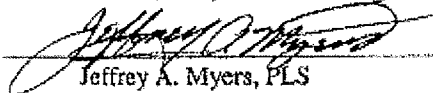
EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 2 of 2
Parcel: 5A Temporary Easement for Sanitary Sewer Construction
 and Telecommunications

section; thence South 0 degrees 11 minutes 56 seconds West 30.00
feet along said east line to the point of beginning and
containing 1.634 acres, more or less.

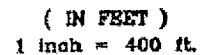


Certified this 12th day of February, 2007


Jeffrey A. Myers, PLS

Professional Land Surveyor No. 29300001
State of Indiana

SHEET 1 OF 3



HATCHED AREA IS THE APPROXIMATE TAKING

OWNER: BOYCE LAND CO., INC.
PARCEL: 5
CODE: 38753
TOWN: WESTFIELD
COUNTY: HAMILTON
PROJECT: WESTSIDE INTERCEPTOR
SECTION: 5
TOWNSHIP: 18N
RANGE: 3E

DRAWN BY: NATHAN A. GOINS 05/11/04
CHECKED BY: JEFFERY A. MYERS 05/12/04

INSTRUMENT NO. 9219188 , DATED 05/14/92

Dimensions shown are from the above listed Record Documents.

EXHIBIT "B"
EASEMENT PARCEL PLAT

| PARCEL COORDINATE CHART | | | |
|--------------------------------|-------------|----------------|---------------|
| <i>NUMBER</i> | <i>LINE</i> | <i>STATION</i> | <i>OFFSET</i> |
| 515 | Line "A" | 72+66.77 | 8.99 Lt. |
| 516 | Line "A" | 76+87.8 Bl | 9.04 Lt. |
| 517 | Line "A" | 80+73.19 | 17.11 Lt. |
| 518 | Line "A" | 85+75.19 | 16.63 Lt. |
| 519 | Line "A" | 88+81.93 Bl | 15.00 Rt. |
| 520 | Line "A" | 94+03.40 | 14.26 Lt. |
| 521 | Line "A" | 98+25.97 | 15.00 Lt. |
| 522 | Line "A" | 96+25.97 | 15.00 Rt. |
| 523 | Line "A" | 103+43.82 | 15.00 Lt. |
| 571 | Line "A" | 70+33.73 | 12.91 Rt. |
| 572 | Line "A" | 72+68.87 Bl | 12.91 Rt. |
| 573 | Line "A" | 80+72.98 Bl | 12.76 Rt. |
| 574 | Line "A" | 85+74.66 Bl | 12.89 Rt. |
| 575 | Line "A" | 88+58.11 | 14.87 Rt. |
| 576 | Line "A" | 94+25.57 Bl | 15.72 Rt. |
| 577 | Line "A" | 96+33.09 Bl | 15.00 Rt. |
| 578 | Line "A" | 98+85.99 | 15.00 Rt. |

*See Location Control Route Survey Plat for Points:
15, 16, 17, 18, 19, 20, 21, 22, & 23*

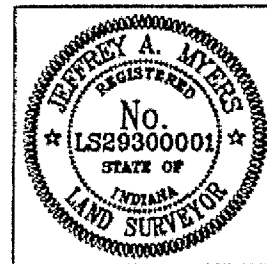
SURVEYOR'S STATEMENT

To the best of my knowledge and belief, this plat, together with the "Location Control Route Survey Plat" recorded as Instrument No. 200400036801 in the Office of the Recorder of Hamilton County, Indiana, (incorporated herein and made a part hereof by reference) comprise a Route Survey executed in accordance with Indiana Administrative Code 865 IAC 1-12 (Rule 12).

HNTB

111 Monument Circle, Suite 1200
Indianapolis, IN 46204
(317) 636-4682
FAX (317) 917-5211

Jeffrey A. Myers
JEFFREY A. MYERS



2/12/2007

OWNER: **BOYCE LAND CO., INC.**
PARCEL: **5**
CODE: **36753**
TOWN: **WESTFIELD**
COUNTY: **HAMILTON**
PROJECT: **WESTSIDE INTERCEPTOR**
SECTION: **5**
TOWNSHIP: **18N**
RANGE: **3E**

DRAWN BY: **NATHAN A. GORNS 05/11/04**
CHECKED BY: **JEFFERY A. MYERS 05/12/04**

INSTRUMENT NO. **9219188** , DATED **05/14/92**

Dimensions shown are from the above listed Record Documents.

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 1 of 1
Parcel: 5B Permanent Easement for Sanitary Sewer
and Telecommunications

A part of the Northwest Quarter Section 4, Township 18 North, Range 3 East, Hamilton County, Indiana and being that part of the grantors' land lying within the permanent easement lines depicted on the attached Easement Parcel Plat, marked "EXHIBIT B", described as follows: Beginning at Station 108+92.14, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence South 90 degrees 00 minutes 00 seconds East 17.32 feet along said north line; thence South 42 degrees 18 minutes 44 seconds West 58.23 feet to the south line of the grantors' land; thence South 89 degrees 35 minutes 29 seconds West 17.43 feet along said south line to Station 108+33.74, said Line "A"; thence continuing South 89 degrees 35 minutes 29 seconds West 23.40 feet along said south line; thence North 42 degrees 18 minutes 44 seconds East 58.62 feet to the north line of the grantors' land; thence South 90 degrees 00 minutes 00 seconds East 23.25 feet along said north line to the point of beginning and containing 0.040 acres, more or less.



Certified this 12th day of February, 2007

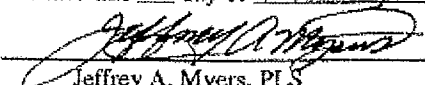

Jeffrey A. Myers, PLS
Professional Land Surveyor No. 29300001
State of Indiana

EXHIBIT "A"

Project: Westfield Westside Interceptor Sheet 1 of 1
Parcel: 5C Temporary Easement for Sanitary Sewer Construction
and Telecommunications

A part of the Northwest Quarter of Section 4, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: Beginning on the north line of the grantors' land North 90 degrees 00 minutes 00 seconds West 23.25 feet from Station 108+92.14, Line "A" on the Location Control Route Survey Plat recorded as Instrument No. 200400036801 in the Office of the Recorder of said county; thence South 42 degrees 18 minutes 44 seconds West 58.62 feet to the south line of the grantors' land; thence South 89 degrees 35 minutes 29 seconds West 40.83 feet along said south line; thence North 42 degrees 18 minutes 44 seconds East 59.02 feet to the north line of the grantors' land; thence South 90 degrees 00 minutes 00 seconds East 40.57 feet along said north line to the point of beginning and containing 0.041 acres, more or less.

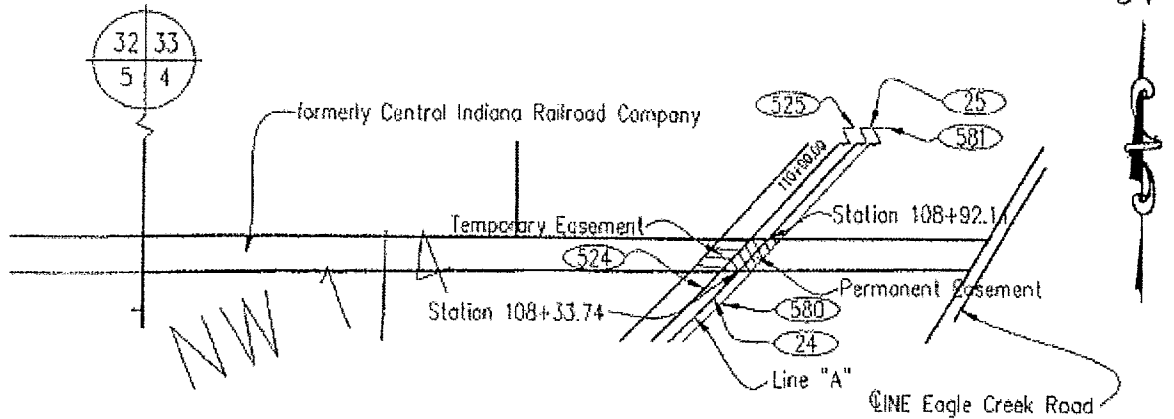


Certified this 12th day of February, 2007

Jeffrey A. Myers, PLS
Professional Land Surveyor No. 29300001
State of Indiana

EXHIBIT "B" EASEMENT PARCEL PLAT

SHEET 3 OF 3



PARCEL COORDINATE CHART

| NUMBER | LINE | STATION | OFFSET |
|--------|----------|---------------|-----------|
| 524 | Line "A" | 107+87.25 | 17.19 Lt. |
| 525 | Line "A" | 110+91.51 | 16.52 Lt. |
| 580 | Line "A" | 107+87.16 Bt. | 12.79 Rt. |
| 581 | Line "A" | 110+90.81 Bt. | 12.81 Rt. |

See Location Control Route Survey Plat for Points:
24 & 25

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

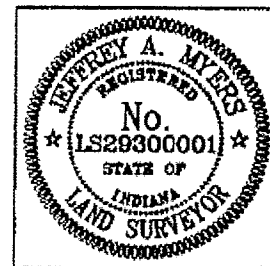
SURVEYOR'S STATEMENT

To the best of my knowledge and belief, this plat, together with the "Location Control Route Survey Plat" recorded as Instrument No. 20040036801 in the Office of the Recorder of Hamilton County, Indiana, (incorporated herein and made a part hereof by reference) comprise a Route Survey executed in accordance with Indiana Administrative Code 865 IAC 1-12 (Rule 12).

HNTB

111 Monument Circle, Suite 1200
Indianapolis, IN 46204
(317) 636-4682
FAX (317) 917-5211

Jeffrey A. Myers
JEFFREY A. MYERS



2/12/2007

HATCHED AREA IS THE APPROXIMATE TAKING

OWNER: BOYCE LAND CO., INC.
PARCEL: 5A
CODE: 36753
TOWN: WESTFIELD
COUNTY: HAMILTON
PROJECT: WESTSIDE INTERCEPTOR
SECTION: 4
TOWNSHIP: 18N
RANGE: 3E

DRAWN BY: NATHAN A. GOINS 05/16/04
CHECKED BY: JEFFREY A. MYERS 05/18/04

INSTRUMENT NO. 9228739 , DATED 09/29/92

Dimensions shown are from the above listed Record Documents.